

From: Across The World Adoptions [adopt@atwakids.org]
Sent: Wednesday, December 10, 2003 6:23 PM
To: adoptionregs@state.gov
Subject: State/AR-01/96 (Comments on Proposed Hague Regulations)

From: Across The World Adoptions <adopt@atwakids.org>
Date: Wed December 10, 2003 2:59:01 PM US/Pacific
To: adoptionregs@state.gov
RE: State/AR-01/96 (Comments on Proposed Hague Regulations)

Across The World Adoptions is an international adoption agency, licensed by the state of California since 1996. We offer the following comments on the proposed Hague Regulations:

1. The Department of State (hereafter DOS) should publish the comments it receives and its response as a draft and allow for further comment before adopting final regulations.
2. Recognizing that the proposed regulations for Part 97 (Procedures for Convention Adoptions) are not yet published, we are concerned about UNDER-regulation of the role of the DOS as Central Authority. In the Intercountry Adoption Act (IAA), Congress recognizes "the need for uniform interpretation and implementation of the convention in the United States AND ABROAD" (Sec. 2(a)(2) emphasis added). The preamble and proposed regulations offer almost no information on how DOS will advocate for uniform interpretation and implementation in other countries. The recent complete failure of the attempted Hague implementation in Guatemala and its effect on U.S. citizens adopting from that country demonstrates the need for U.S. advocacy in this area.
3. The IAA's three core purposes in Sec. 2(b) are (1) U.S. implementation of the Convention; (2) protection of the rights of children, birth families and adoptive parents while ensuring that adoptions are in the children's best interests; and (3) improving the ability of the Federal Government to assist U.S. citizens seeking to adopt children from abroad. We respectfully request that DOS focus first on itself (including the professional experience of its staff in international adoptions or child services (Sec. 101(b)(2)), its role as the Central Authority and how it proposes to fulfill its core mandate before regulating the agencies it will oversee.
4. The proposed regulations excessively regulate agencies and the accreditation process; far beyond the scope of the IAA. We are concerned that the proposed regulations will defeat the core purpose above of assisting U.S. citizens seeking to adopt children from abroad. The proposed regulations should be scaled back to conform to the original Act in recognition that one of the most critical considerations in child welfare is achieving permanency as expeditiously and inexpensively as possible. In many countries, Convention implementation, or attempted implementation has had the reverse effect of dramatically reducing or stopping intercountry adoptions, reducing transparency in the process and increasing corruption.
5. We respectfully request that the U.S. engage in a further period of education and self-study before implementation. The U.S. has not made studies or statistical data available to support its assertions that the Convention protects children and that implementation improves the process of intercountry adoption. Our experience is the reverse: the Hague Convention has drastically reduced the number of international adoptions from the sending countries in which it has been implemented without any measurable, concurrent increase in child protection or domestic adoption. We have reviewed the "Report and Conclusions of the Special Commission on the Practical Operation of the Hague Convention" from November and December 2000 and found very little concrete evidence of the alleged success of the Convention in countries where it has been implemented. At the very least, statistical data should be published comparing the number of adoptions in party countries before implementation and after. In addition, we are not aware of any studies that demonstrate that agencies currently accredited by any existing U.S. entities are providing "better" or more ethical adoption services than unaccredited agencies.
6. As one of the core purposes is to assist U.S. citizens seeking to adopt abroad, DOS

should maintain a current web page on adoption for each country from which Americans adopt 10 or more children each year. We are aware that DOS has such a web site for some countries. The sites for Kazakhstan and Guatemala are among the better ones. Some, however, bear almost no resemblance to how adoptions are actually accomplished in the country (Mexico) and some are down for lengthy periods (Nepal). In order to truly assist U.S. citizens, the sites have to be up-to-date and contain current contact names, phone and fax numbers and email addresses for DOS/Central Authority personnel in charge of each country. It should also be the responsibility of DOS to interact with the Central Authorities of other countries to resolve hurdles in adoptions, both overall and in specific cases.

7. DOS should advocate for the establishment of a neutral fact-finding tribunal to investigate and document alleged adoption abuses and use the Convention as a mechanism for resolving complaints and disputes between party countries. Unfounded accusations and rumors of child trafficking have undermined confidence in intercountry adoption. The Convention should impose appropriate sanctions for documented abuses and actively expose unsubstantiated propaganda.

8. Social workers with a Bachelor's degree in Social Work (or closely related fields) and experience in international adoption are more competent and effective in this field than social workers with a Master's degree and no experience in the field of international adoption. We should be able to fully utilize experienced BSW (or those with Bachelor's or Master's degrees in closely related fields) workers without any special oversight requirements (or at least provide some "grandfathering" provision for BSWs with two or more years experience).

9. Although we currently have General Liability/Professional Liability (GL/PL) insurance (we are up for renewal in December, 2003), we have been unable to obtain Directors and Officers liability insurance. We are also concerned that the 2004 quote for GL/PL will be beyond our budget. The requirement of \$1,000,000 per occurrence is excessive.

10. Requiring a three-month operating budget reserve is beyond our reach. If an agency completes the required audit and demonstrates sound financial practices, it should not be forced to maintain some arbitrary reserve. If an artificial limit is imposed, it should not include [pass through] expenses (funds received that are passed on to other recipients such as orphanage donations, fees for foreign service providers or simply advancing client expenses like authentication or translation fees or travel costs.)

11. We accept responsibility for our employees because we are able to control their actions. We do not have any employees overseas because we are not able to effectively control their actions. We do cooperate with certain individuals in other countries who assist in adoption activities. Many of these individuals are licensed professionals in their own countries, subject to the laws of those jurisdictions. For instance, although we collaborate with attorneys in Guatemala, we are not licensed attorneys in Guatemala and cannot (and should not) control how they conduct their professional activities. In certain countries, the people who help families complete their adoptions abroad may be independent contractors who accomplish their work by their own methods. Although we believe the people in foreign countries with whom we cooperate to be competent and ethical, we do not have direct authority over them and should not be held accountable for their actions or inactions, only those of our own employees (if we have them).

12. We should be able to use knowing and intelligently given risk waivers in our contracts with our clients. We have no control over the actions of non-employee service providers in foreign countries. We must rely on the reports provided to us by doctors, psychologists, social workers and other professionals in foreign countries who may not have training, resources and standards equal to those available in the United States. Therefore the application of U.S. norms or duty of care is not possible. Usually, there is no way that we can independently investigate medical information and especially not social history. A history of physical or sexual abuse is particularly difficult to document. Even within the Convention framework, we are forced to rely on reports provided by accredited entities. If these reports are inaccurate or incomplete (or even fraudulent), we have no way of knowing and less of an opportunity to independently investigate. DOS should cooperate with adoption agencies to draft a risk waiver that is the standard for the industry.

13. Except in cases of fraud or intentional misrepresentation, liability for agency negligence should be limited to a refund of the agency fee (not the foreign fee portion, since there is no control over the fee charged by individuals abroad or foreign countries and payments are made for service, not contingent on success.) Conversely, fraud or intentional misrepresentation BY AGENCY EMPLOYEES should subject an agency to punitive damages exposure.

14. Agencies should be required to offer (provide) training for prospective adoptive parents, but its completion should be voluntary and an informed choice on the part of the prospective parents. Some individuals learn better in group settings, some independently. Some are auditory learners and pick up material well in a class room setting and some are more visual learners. Some experienced adoptive parents can and sometimes do effectively lead adoption education groups themselves and should not be subject to a compulsory and arbitrary training requirement. The language in Sec. 96.48 should be clarified to read that agencies must ☐offer☐ at least ten hours of training. It would be difficult to require its completion if a family did not want to cooperate. Families who decline to participate in parent education and training should have limited ability to sue agencies.

15. Birthparents should be able to consent to the immediate adoption abroad of their child(ren) without a waiting period to identify a domestic family. These waiting periods significantly delay placements at a critical stage in a child's development (especially in the case of infants). For children leaving the U.S., it is unlikely that such a provision is even constitutional since benefit to the child cannot usually be demonstrated. The constitutional infirmity could be cured by permitting a birthmother's statement that she does not wish such a search to be undertaken to specifically constitute ☐reasonable efforts☐ under the law.

16. The U.S. should advocate for the position that agencies accredited in the U.S. should be automatically entitled to operate in other party countries without any further approval process in the other country.

17. We are concerned that there will be so few accrediting entities as to result in a virtual monopoly. In addition, the fee charged by the accrediting entity is dwarfed by comparison with the investment in time and personnel required to achieve accreditation. The cost of these resources could easily exceed \$100,000. When coupled with the ancillary charges (the cost of an audit, the attorney fees and the cost of insurance etc.) the resources and expenses associated with accreditation are astronomical.

18. We consider ours a small agency. We will be involved in arranging about 20 adoptions in 2003. However, we will complete over 100 home studies. Since home studies are considered adoption services, we question how many agencies will be eligible for temporary accreditation.

19. If receipts are required, they should only be for agency fees and costs. We are not able to provide receipts for the services of the people we cooperate with in foreign countries.

20. Families must be mandated to cooperate in any post-placement requirement imposed by the country of origin or by the agency in a contract signed by the client. The ability of parents to sue who have not cooperated with post-placement should be curtailed. Clients who move to a different state after completing an intercountry adoption must be required to contract with an agency licensed in the new state to complete any remaining post-placement.

21. ☐Disruption☐ is defined as the interruption of a placement for adoption before the adoption has become final. This definition is far too broad and could include many benign causes such as an adoptive family that experiences a financial or personal crisis (like a death in the family) that makes it impossible for the family to continue an adoption plan. Or, it could mean that a child's family member has come forward at the last minute and the adoption could not go forward. Based on the content of Sec. 96.43, we believe DOS is interested in disruptions that occur after a child has left his or her country of origin. The definition of disruption should be revised to reflect this.

22. If an adoption is dissolved and the child is re-placed into a new family in what is now a domestic adoption, the new family must agree to complete any remaining post-placement for the original adoption as a condition of the current adoption.

23. The time period for the receipt of applications to become an accrediting entity must be extended. Many state licensing authorities are not up to speed on the regulations and DOS has not done adequate outreach to potential accrediting entities.

24. In Sec. 19.35(b)(4), (5) & (6), the 10 year period should be reduced to 3 years. In Sec. 19.35(b)(6), the agency should be required to disclose lawsuits only in those cases where it was found liable. Some provision should be made to authorize the non-disclosure of confidential settlements.

25. It should be clarified that fees paid on a case-by-case basis are not [contingent]. For instance, a social worker who is paid for each home study she performs is not receiving a contingent payment.

26. In Sec. 96.39, it is premature to provide a sample contract at [initial contact]. Many potential clients contact agencies through mass emails requests. It would be unduly burdensome to require the provision of a sample contract at this stage. This should be changed to [Upon application for adoption services [Specify type of service applied for], a sample contract shall be provided. The type of service applied for must be specified, because home study clients, for example, should receive sample home study contracts but need not be provided with a contract for adoption in a specific country unless they also decide to apply for that service.

27. DOS should be required to preserve Convention records; not agencies.